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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,149	06/01/2000	Timothy M. Schweikert	8617-81	5243

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EXAMINER

PATEL, VINOD D

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 01/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/585,149

Applicant(s)

SCHWEIKERT ET AL.

Examiner

VINOD D. PATEL

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 31-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) ✓
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED OFFICE ACTION

INTRODUCTION

1. This application/control number 09/585,149 has been examined. This is the first action on the merits of the claimed invention. The application has claims 20-30 pending.
2. Applicant's election with traverse of group II (claims 20-30 drawn to a multilumen catheter assembly in Paper No. 8 is acknowledged. The traversal is on the ground(s) that (a) there is not a serious burden on the examiner, and (b) the cost to the applicant of the proposed restriction would be unduly burdensome.

The first argument is not found persuasive because the inventions are distinct, each from the other as explained in earlier office action based on the **claimed subject matter**. Examination of all of three groups in this application would place a serious burden upon the examiner.

The second argument is not found persuasive because as a general rule all applicants are treated equally. Under election/restriction practice, there are no provisions under which one applicant may be treated differently than others. According to applicant "while the PTO has legitimate interest in obtaining proper revenue, it does not have unrestrained power to tax inventors." This is applicant's feeling and it does not have any weight on the decision. The election requirement is deemed proper and is therefore made FINAL.

Drawings

3. The drawings are objected to because Fig. 7A thru Fig. 8B are shown too close to each other. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 20-28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Palestrant (US5807311).

Palestrant discloses (Fig. 1-8) a multi lumen catheter assembly (10) comprising all claimed limitations including a first lumen (12) extending between a first distal end (14) and proximal end (16) and a second lumen (18) extending between a first distal end (20) and a proximal end (22), the first lumen (12) and the second lumen (18) are joined at contact point (19) and both lumens can be extruded concurrently and both lumens can be made from same material, second ends 16 and 22 of first and second lumens (12) and (18) are secured to a Y-hub or connector hub (24), extending from connector hub are first connector tube (26) and a second connector tube (28), connector hub (24)

Art Unit: 3742

couples first connector tube (26) to second end (16) of first lumen (12) and second connector tube (28) to the second end (22) of the second lumen (18), pair of clamps (32) and (34) for selectively closing off such connector tubes before and after use, as shown in Fig. 1-8 the first and second distal end tubes are generally circular in transverse cross section, as shown in Fig. 3A and 3B lumen has a generally cylindrical shape, this term is intended to include circular cross-section as well as oval elliptical cross-sections.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palestrant (US5807311) in view of Pourchez (US6001079).

Claim differs from Palestrant in calling for a plurality of holes formed through each of the first and second distal end tubes.

Pourchez discloses a dual lumen catheter (1) comprising a distal end (5) having a plurality of holes (7, 8) to deliver and/or sample fluid (4) to or from a patient's body.

In view of Pourchez, it would have been obvious to one of ordinary skill in the art to provide a plurality of holes to the device of Palestrant to deliver and or/sample fluid to or from a patient's body.

Art Unit: 3742

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited below should be considered both separately and in conjunction with the previously cited prior art when responding to this action.

Rosenburg (US5100395), Miller (US5380276), Batforf (US5549579), Miller (US5683640), Shaari (US5599304), Fulton (US6074374), Ash (US690349) relate to catheters.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VINOD D. PATEL whose telephone number is 703-308-5227. The examiner can normally be reached at 6.30 A.M. TO 4.00 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached at 703-308-1327. The fax phone numbers for the organization where this application or proceeding is 703-872-9302. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

VP
January 9, 2003


Teresa Walberg
Supervisory Patent Examiner
Group 3700